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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,007	05/05/2005	Wolfgang Theimer	915-006.081	2386

4955 7590 02/04/2009  
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EXAMINER
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NGO, CHUONG D

ART UNIT	PAPER NUMBER
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2193

MAIL DATE	DELIVERY MODE
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02/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,007	<b>Applicant(s)</b> THEIMER ET AL.	
	<b>Examiner</b> Chuong D. Ngo	<b>Art Unit</b> 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/5/05</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, it is indefinite as to what is “characterized by”, the method or the receiving of second data string.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter

Claims 1-15 are directed to inventions that merely perform calculations and manipulations of data according to a mathematical algorithm for determining a similarity between two data strings. In order for such a claimed invention that merely performs calculations and manipulations of data to be statutory, the claimed invention must accomplish a practical application, and is not directed to a preemption of a calculation and/or manipulation data. That is the claimed invention must transform an article or physical object to a different state or thing, or produce a useful, concrete and tangible result and not cover every substantial practical application. See *State Street* 47 USPQ2d, *Benson* 175 USPQ , and “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, OG

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Notices: 22 November 2005.

It is clear from claims 1-15 that the claimed invention merely involve in calculations and manipulations of data. It does not transform an article or physical object to a different state or thing. The claimed invention also fails to produce a useful, concrete and tangible result. The result produced by the inventions is a data merely indicating a similarity between the two data strings without a practical application recited in the claims for the invention to give the result some real world value. Thus, claims 1-25 are directed to non-statutory subject matter as the claimed inventions fails to accomplish a practical application. Further, since the claims do not limit the invention to a practical application, they appear to cover every substantial practical application, and thus are directed to a preemption of the claimed calculations and manipulations of data.

Claims 1-9 are also directed to non-statutory subject matter because the claims recite a mental process. It should be noted that for a method to be statutory, the method must also transform an article or physical object to a different state or thing or be implemented by a particular machine or apparatus. It is clear claims 1-11 that the method is not implemented by a particular apparatus or transforms an article or physical object to a different state or thing. Therefore, claims 1-9 are also directed to a non statutory subject matter as being a mental process.

Further, as disclosed in page 10, lines 10-14, the computer readable medium includes carrier wave. Since carrier waves are held not fall within one of the four statutory categories of invention recited in 35 USC § 101: process, machine, manufacture and composition of matter, claims 10,11 and 13 are also directed to non-statutory subject matter as being directed a program

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embodied in a carrier wave.

Claim 12 is also directed to non-statutory subject matter as being directed to a computer program per se without embodied in a computer readable memory.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong D. Ngo whose telephone number is (571) 272-3731. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis, Jr. A. Bullock can be reached on (571) 272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuong D Ngo/

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Primary Examiner, Art Unit 2193

01/31/2009